

## Message Text

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ORIGIN EB-07

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FM SECSTATE WASHDC

TO AMEMBASSY KABUL IMMEDIATE

AMEMBASSY ALGIERS IMMEDIATE

AMEMBASSY BUENOS AIRES IMMEDIATE

AMEMBASSY CANBERRA IMMEDIATE

AMEMBASSY VIENNA IMMEDIATE

AMEMBASSY DACCA IMMEDIATE

AMEMBASSY BRUSSELS IMMEDIATE

AMEMBASSY LA PAZ IMMEDIATE

AMEMBASSY BRASILIA IMMEDIATE

AMEMBASSY SOFIA IMMEDIATE

AMEMBASSY OTTAWA IMMEDIATE

AMEMBASSY BOGOTA IMMEDIATE

AMEMBASSY PRAGUE IMMEDIATE

AMEMBASSY COPENHAGEN IMMEDIATE

AMEMBASSY QUITO IMMEDIATE

AMEMBASSY CAIRO IMMEDIATE

AMEMBASSY ADDIS ABABA IMMEDIATE

AMEMBASSY PARIS IMMEDIATE

AMEMBASSY LIBREVILLE IMMEDIATE

AMEMBASSY BONN IMMEDIATE

AMEMBASSY BERLIN IMMEDIATE

AMEMBASSY ATHENS IMMEDIATE

AMEMBASSY TEHRAN IMMEDIATE

AMEMBASSY ROME IMMEDIATE

AMEMBASSY ABIDJAN IMMEDIATE

AMEMBASSY KINGSTON IMMEDIATE

AMEMBASSY TOKYO IMMEDIATE

AMEMBASSY AMMAN IMMEDIATE

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AMEMBASSY NAIROBI IMMEDIATE

AMEMBASSY MONROVIA IMMEDIATE  
AMEMBASSY KUALA LUMPUR IMMEDIATE  
AMEMBASSY MEXICO IMMEDIATE  
AMEMBASSY LAGOS IMMEDIATE  
AMEMBASSY OSLO IMMEDIATE  
AMEMBASSY ISLAMABAD IMMEDIATE  
AMEMBASSY LIMA IMMEDIATE  
AMEMBASSY LISBON IMMEDIATE  
AMEMBASSY BUCHAREST IMMEDIATE  
AMEMBASSY BANGKOK IMMEDIATE  
AMEMBASSY LOME IMMEDIATE  
AMEMBASSY TUNIS IMMEDIATE  
AMEMBASSY MOSCOW IMMEDIATE  
AMEMBASSY LONDON IMMEDIATE  
AMEMBASSY CARACAS IMMEDIATE  
AMEMBASSY SANA IMMEDIATE  
AMEMBASSY BELGRADE IMMEDIATE  
AMEMBASSY KINSHASA IMMEDIATE  
AMEMBASSY LUSAKA IMMEDIATE  
USMISSION USUN NEW YORK IMMEDIATE

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FOL RPT GENEVA 5759 ACTION TOKYO INFO SECSTATE USUN NY OECD PARIS  
USEC BRUSSELS 19 JUL QUOTE

LIMITED OFFICIAL USE GENEVA 5759

E.O.11652: NXA  
TAGS:ECOSOC UN EGEN EFIN JA  
SUBJECT: 61ST ECOSOC: US PROPOSAL ON ILLICIT PAYMENTS

REF: STATE 177215

1. USDEL HAD LENGTHY DISCUSSION WITH JAPANESE DELEGATION ON  
JULY 19 ABOUT OUR PROPOSED RESOLUTION ON ILLICIT PAYMENTS.  
JAPANESE INFORMED US INTER ALIA THAT THEY WOULD BE  
MEETING IN TOKYO ON JULY 20 WITH EMBASSY OFFICIALS TO DISCUSS  
THE SAME. FOR YOUR BACKGROUND, WE ARE PROVIDING HEREWITH A  
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SUMMARY OF THE MAJOR CONCERNS WHICH THEY RAISED AND OUR  
RESPONSES HERE IN GENEVA WHICH APPEARED TO HIT A RECEPTIVE  
CHORD.

2. SPECIFIC ITEMS DISCUSSED INCLUDE:

A) GOJ CONCERN THAT A LEGALLY BINDING TREATY IN THIS AREA  
MAY PREJUDICE OUR OPPOSITION TO LEGALLY BINDING AGREEMENTS IN  
TNC CODE OF CONDUCT, ETC. WE EXPLAINED THAT UNLIKE  
CODE ISSUES WHICH WERE BREAKING NEW GROUND AS REGARDS

INTERNATIONAL ECONOMIC REGULATION, MOST COUNTRIES HAD CRIMINAL LEGISLATION CONDEMNING ILLICIT PAYMENTS TO GOVERNMENT OFFICIALS. IT IS THEREFORE A QUESTION OF INTERNATIONAL COOPERATION ON AN ISSUE WHERE THERE EXISTS BASIC AGREEMENT ON THE PRINCIPLES INVOLVED AND, AS IT DEALS WITH CRIMINAL MATTERS, IT IS LOGICAL AND NECESSARY TO TREAT ISSUE VIA AN INTERNATIONALLY BINDING AGREEMENT, JUST AS US AND JAPAN HAVE DONE IN MUTUAL ASSISTANCE AGREEMENT AS REGARDS LOCKHEED. WE EMPHASIZED AT THE SAME TIME THAT THE US POSITION OPPOSING LEGALLY BINDING AGREEMENT IN THE OTHER AREAS MENTIONED ABOVE REMAINED FIRM.

B) GOJ ALSO APPEARED CONCERNED THAT TREATY PROPOSAL WOULD LEAD TO THE ESTABLISHMENT OF BROAD RANGE OF MANDATORY CRIMINAL LEGISLATION WHICH WOULD CAUSE LEGAL AND POLITICAL PROBLEMS IN JAPAN. USDEL EXPLAINED THAT OUR PREFERENCE FOR CONTENTS OF TREATY HAD BEEN SET OUT IN LIMA, PERU AT SECOND SESSION OF TNC COMMISSION AND THAT THESE PREFERENCES ARE NOT AS FAR RANGING AS GOJ FEARS. WE (AS WE BELIEVE GOJ) ASSIGN PRIMARY RESPONSIBILITY FOR THE REGULATION AND PROSECUTION OF ILLICIT PAYMENTS TO NATIONAL GOVERNMENTS. USG'S PREFERENCE IS FOR TREATY TO ESTABLISH (I) PROCEDURES FOR INTERGOVERNMENTAL COOPERATION AND INFORMATION EXCHANGE IN LAW ENFORCEMENT ACTIVITIES RELATED TO ILLICIT PAYMENTS (AS IN US-GOJ AGREEMENT RELATED TO LOCKHEED MATTER); (II) APPROPRIATE REPORTING AND DISCLOSURE REQUIREMENTS FOR ENTERPRISES AS REGARDS PAYMENTS TO AGENTS AND FOREIGN GOVERNMENT OFFICIALS; AND (III) PENALTIES FOR VIOLATIONS OF DISCLOSURE REQUIREMENTS. WHILE USG HAS THESE PREFERENCES, IT MUST BE STRESSED THAT WE RECOGNIZE THAT FINAL TEXT OF TREATY, AFTER A YEAR OF NEGOTIATION, MAY CONTAIN EITHER MORE OR LESS THAN THE ABOVE. THE USG DOES NOT INSIST THAT A TREATY CAN BE ESTABLISHED ONLY ON THE ABOVE PROPOSALS. BASIC POINT OF LIMITED OFFICIAL USE

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US RESOLUTION IS THAT WE BELIEVE THAT THE ONLY EFFECTIVE AND MEANINGFUL MECHANISM FOR INTERNATIONAL COOPERATION TO ELIMINATE ILLICIT PAYMENTS IS VIA AN INTERNATIONAL TREATY AND DRAFTING OF TREATY IS THEREFORE CORE OF US PROPOSAL. SUPPORT OF GOVERNMENTS FOR RESOLUTION IS ONLY A RECOGNITION OF THIS FACT. TO SUBSTITUTE A "STUDY" FOR EFFECTIVE ACTION IS TO LOSE A RARE AND IMPORTANT OPPORTUNITY FOR ALL COUNTRIES TO COOPERATE IN HELPING TO RESOLVE AN INVESTMENT PROBLEM CREATING ECONOMIC AND FOREIGN RELATIONS PROBLEMS. EXACT CONTENTS OF TREATY WILL BE DETERMINED ONLY AFTER LENGTHY NEGOTIATING PROCESS INVOLVING WORKING GROUP, ECOSOC AND UNGA. EACH COUNTRY WILL CERTAINLY BE ABLE TO PROTECT ITS ESSENTIAL INTERESTS DURING THESE NEGOTIATIONS AND, OF COURSE, NO COUNTRY WOULD BE OBLIGED TO SIGN THE EVENTUAL TREATY. THE

CRITICAL NOTION AT THIS POINT IS THAT OUR PROPOSAL IS ESSENTIALLY PROCEDURAL AND ESTABLISHES A MEANINGFUL MECHANISM WHEREBY SUCH A TREATY MIGHT BE NEGOTIATED.

C) THE PROPOSAL OF A TREATY WOULD, WE BELIEVE NOT ONLY HELP ELIMINATE ILLICIT PAYMENTS BUT COULD HAVE SIGNIFICANT IMPACT ON RELATIONS WITH G-77 FOR SUCH MEMBERS OF G-77 WHO REFUSE TO NEGOTIATE OR RATIFY TREATY CANNOT THEREAFTER ACCUSE TNC'S AND DEVELOPED COUNTRIES OF PROMOTING CORRUPTION AND REFUSING TO TAKE ADEQUATE STEPS TO MEET THE NEEDS OF DEVELOPING COUNTRIES.

D) GOJ EXPRESSED CONCERN ABOUT THE MANDATE WHICH WOULD BE ASSIGNED TO THE WORKING GROUP ON THE GROUNDS THAT IT IS TOO "NARROW." WE EXPLAINED THAT NARROW MANDATE I.E. LIMITED TO ILLICIT PAYMENTS MADE IN CONNECTION WITH GOVERNMENT TRANSACTIONS, WAS FOR THE PROTECTION OF DEVELOPED COUNTRIES AS A BROADER MANDATE COULD BE USED BY G-77 AS A HUNTING LICENSE TO DRAFT A DOCUMENT CONDEMNING TNC'S IN GENERAL.

3. JAPANESE DEL WILL BE CABLING TOKYO TONIGHT AS TO OUR CONVERSATION AND IT MAY BE USEFUL FOR EMBOFF TO DRAW ON ABOVE TO CLARIFY ANY MISUNDERSTANDINGS OR QUESTIONS RAISED BY GOJ, IN ADDITION TO EMBOFF MAKING POINTS RAISED IN REFTEL. IT IS ABSOLUTELY ESSENTIAL  
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THAT THE GOJ UNDERSTAND THE IMPORTANCE WE ATTACHE TO THIS RESOLUTION AND IN PARTICULAR THAT CONCRETE STEPS --NOT STUDIES--BE TAKEN TO RESOLVE THE PROBLEM.DALE  
UNQUOTE KISSINGER

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**To:** KABUL MULTIPLE  
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